THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 18295 OF 2005

DATED: 05-09-2007

BETWEEN:

Mohd.Waheed Ahmed,
S/o.Late M.A.Khadar

…Petitioner

and

The A.P.State Wakf Board,
Rep.by its Chief Executive Officer,
Haj House, Public Gardens Road,
Nampally, Hyderabad and another

…Respondents

THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 18295 OF 2005

ORDER:

This writ petition is filed by the petitioner seeking a writ of Mandamus declaring the action of the respondents in not appointing the petitioner as Mutawally of Ashurkhana Bade-Shahi inside Fort, Khammam, Khammam District as arbitrary, illegal, and discriminative and violative of the provisions of Article 14, 19(1)(g) and 21 of the Constitution of India and consequently direct the respondents to appoint the petitioner as Mutawally of the said Wakf.

2. It is stated that Ashurkhana Bade-Shahi wakf is a notified wakf in Sl.No.10696 in the list of Wakf property. The Government of Andhra Pradesh issued the notification in A.P.Gazette dated 25-01-1990 and as per the said notification, one Mr.Mohd.Abbas and the petitioner's father Abdul Khadar were shown as Mutawallies. It is further stated that after the demise of the petitioner's father and father of Md.Illyas who were the Mutawallies in respect of Wakf Institution, the petitioner was functioning as Mutawalli and there was no objection from any body for any quota. But, however the authorities have not

declared the petitioner as a Mutawalli as legal heir of the deceased Mutawalli. Therefore, the petitioner made an application on 17-06-2002 for sanction of Towliyath. It is further stated that the petitioner and Mohd.Illyas have furnished the death certificates of their fathers as well as legal heir certificates and other relevant documents on 21-06-2003 as per the requirement of the respondents. But, however no orders were passed even though the first respondent published a notification of the Towliyath inviting claims and objections from all the concerned stipulating 15 days time for filing objections. On 24-07-2004, a notification was published in Urdu Daily newspaper informing the respondents herein about the notification. Pursuant to the said notification, the respondents have not received any objections or claims from anybody, which was confirmed and informed by the Inspector-cum-Auditor, Wakfs by letter dated 19-08-2004 to the respondents herein. But, however no action has been taken by the respondents. In fact, it is stated that the petitioner filed W.P.No.304 of 2005 seeking a direction for appointment of Mutawalli in respect of the institution and the said writ petition was disposed of directing the first respondent to pass appropriate orders within a period of four weeks. After disposal of the said writ petition, the respondents again issued proceedings appointing one Mohd. Illyas as Mutawali to the said institution without appointing the petitioner as Mutawali to the said institution along with him. Hence the present writ petition.

3. The learned counsel for the Wakf Board on the other hand sought to contend that this Court cannot issue a positive direction to appoint the petitioner as Mutawali since the appointment of Mohd.Illyas amounts to rejection of the petitioner's claim, the petitioner is entitled to question the order if he is aggrieved before the Wakf Tribunal, therefore, sought for dismissal of the writ petition.

4. Since the petitioner is claiming to be one of the heirs of one of the Mutawali along with Mohd. Illyas, who also claimed to be the legatee of another Mutawalli, who was appointed as Mutawali, it would

be appropriate to direct the Wakf Board-the first respondent herein to pass appropriate orders on the application of the petitioner considering his claim. Hence the first respondent is directed to pass appropriate orders considering the claim of the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order.

5. Writ petition is accordingly disposed of with the above direction. No costs.

S. ANANDA REDDY, J.

Dated: 05-09-2007
Rns